

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	

ORDER

Adopted: December 6, 2005

Released: December 6, 2005

Before the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order, the Wireline Competition Bureau (Bureau), on its own motion, grants a temporary conditional waiver of section 51.323(c) of the Commission's rules¹ to the extent described herein to provide BellSouth the necessary flexibility to most effectively restore communications services in areas affected by the recent hurricanes.² Requiring strict compliance with the Safety Standard Provision of this rule under the circumstances could impede restoration efforts and further delay service availability to customers.³ Accordingly, we grant this conditional waiver for a period of 18 months from the release of this Order.

2. The effects of the hurricanes on Alabama, Louisiana, and Mississippi are well known at this time. As a method of restoring affected services in certain areas, BellSouth may need to rely on

¹ 47 C.F.R. § 51.323(c). Section 51.323(c), among other things, provides that an incumbent local exchange carrier (LEC) cannot object to collocation of equipment by a requesting telecommunications carrier because "the equipment does not comply with safety or engineering standards that are more stringent than the safety or engineering standards that the incumbent LEC applies to its own equipment" (the Safety Standard Provision).

² On August 29, 2005, President Bush issued Major Disaster Declarations for Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina. See <http://www.fema.gov/news/disasters.fema>. On September 24, 2005, President Bush issued a Major Disaster Declaration for Louisiana as a result of Hurricane Rita. See *id.* The relief granted in this Order is limited to the affected areas described in the August 28, 2005 and September 24, 2005 Major Disaster Declarations and subsequent amendments for those states listed (the hurricane-affected areas). We recognize that President Bush also issued Major Disaster Declarations for the state of Florida on August, 28, 2005 and the state of Texas on September 24, 2005. We do not extend the relief granted in this Order to the states of Florida and Texas because the telecommunications infrastructure in those states apparently was not subject to the same levels of destruction as was the infrastructure in parts of Alabama, Louisiana, and Mississippi.

³ We stress that this waiver Order is solely limited to section 51.323(c)'s Safety Standard Provision and has no affect on the other requirements of section 51.323(c), including the rule regarding an incumbent LEC's inability to deny collocation based on equipment that fails to comply with the National Equipment and Building Specifications (NEBS) performance standards.

wireless broadband solutions until the wireline network can be fully restored. In order to provide this wireless restoral service, we understand that BellSouth may need to place associated wireless equipment within its central offices.⁴ Further, it is our understanding that BellSouth generally requires all equipment in its central offices to comply with NEBS Level 1 safety standards and that the proposed wireless equipment has not been certified with NEBS.⁵ Absent a waiver of section 51.323(c) of the Commission's rules, BellSouth may be unable to deploy the wireless equipment for service restoration purposes and simultaneously fully comply with section 51.323(c).

II. DISCUSSION

3. Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke, amend or waive a Commission rule for good cause shown.⁶ Here, the hurricanes caused substantial damage to telecommunications network facilities. Indeed, the Commission has granted a number of waivers and other temporary authorizations to enable carriers to most effectively restore services to the hurricane-affected areas as quickly as possible. Thus, there is good cause to grant this waiver conditioned upon BellSouth's willingness to permit requesting telecommunications carriers to collocate in its central offices in the hurricane-affected areas the same type of non-NEBS compliant equipment for service restoration purposes on a temporary basis.

4. This conditional waiver shall be limited in both time and scope. Specifically, we grant this temporary waiver for a period of 18 months from the release of this Order to allow BellSouth and other hurricane-affected carriers to restore services in the hurricane-affected areas. This waiver has no affect on BellSouth's obligations to comply with those portions of section 51.323(c) that are not addressed in this Order.

⁴ We understand that BellSouth would typically identify an alternative location for this type of equipment, but that because of the severe damage to the surrounding area caused by the hurricanes and the urgency to restore service, BellSouth is compelled to use its own central office.

⁵ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4781, para. 35 (1999) (finding that NEBS Level 1 safety requirements are sufficient to prevent harm to competitive and incumbent LEC equipment), *rev'd on other grounds*, *GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000).

⁶ 47 C.F.R. § 1.3. This rule provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." *Id.*

III. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 5, and 251(c)(6) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155, and 251(c)(6) and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, BellSouth IS GRANTED a limited conditional waiver of section 51.323(c) of the Commission's rules, 47 C.F.R. § 51.323(c), as described above, to deploy non-NEBS Level 1 compliant equipment in its central offices for service restoration in hurricane-affected areas. This authority expires 18 months from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau